

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EDWARD TIMOTHY GARCIA,

Plaintiff

vs.

NO. 04cv1418 JB/WDS

**MR. JOSEPH BENCOMO,
ADDUS HEALTHCARE, INC.,
and MS. SUSAN K. STAUFFER,**

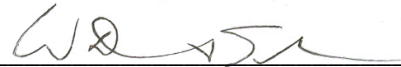
Defendants

**MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION¹**

This matter comes before the Court on the Motion for Summary Judgment filed by Defendants Addus Healthcare, Inc. and Susan K. Stauffer. (Docket No. 19) Defendants seek judgment in their favor on the basis that Plaintiff failed to exhaust his administrative remedies, and his lawsuit should be dismissed pursuant to 42 U.S.C. §1997e(c)(1). Plaintiff has not opposed the instant motion, and the time in which to oppose it has expired. Accordingly, the Court recommends that the motion be granted as unopposed. However, the Court also notes that the Plaintiff's failure to exhaust his administrative remedies was the basis of an earlier motion for summary judgment filed by Defendant Joseph Bencomo. (Docket No. 14) The Plaintiff opposed Mr. Bencomo's motion, and after review of the issue on the merits, the Court recommended that Mr. Bencomo's motion be

¹Within ten (10) days after a party is served with a copy of these findings and recommendations, that party may, pursuant to 28 U.S.C. §636(b)(1), file written objections to such findings and recommendations. A party must file any objections with the Clerk of the U.S. District Court within the ten-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed.

granted. and Plaintiff's complaint against him dismissed without prejudice. (Docket No. 18) The issue presented in this motion is no different than that presented by Mr. Bencomo. Accordingly, in addition to the fact that the motion is unopposed, the Magistrate Judge recommends that Plaintiff's complaint against Defendants Addus Healthcare, Inc. and Susan K. Stauffer be dismissed without prejudice for the same reasons set forth in the Bencomo recommendation.

A handwritten signature in black ink, appearing to read 'W. Daniel Schneider', is written over a horizontal line.

W. Daniel Schneider
United States Magistrate Judge